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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF WASHINGTON MAY 15 2001

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES H. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

10 NUVEEN QUALITY INCOME  
11 MUNICIPAL FUND, INC; NUVEEN  
12 PREMIUM INCOME MUNICIPAL FUND  
13 4, INC.; STRONG MUNICIPAL BOND  
14 FUND, INC.; SMITH BARNEY  
15 MUNICIPAL FUND LIMITED TERM;  
16 SMITH BARNEY MUNICIPAL HIGH-  
17 INCOME FUND; and VANGUARD  
18 HIGH-YIELD TAX-EXEMPT FUND,  
19 Plaintiffs,

20 v.  
21 PRUDENTIAL SECURITIES  
22 INCORPORATED, a Delaware  
23 corporation; WALKER PARKING  
24 CONSULTANTS/ ENGINEERS, INC., a  
25 Michigan corporation; FOSTER PEPPER  
26 & SHEFELMAN PLLC, a Washington  
27 professional limited liability company;  
28 SPOKANE DOWNTOWN FOUNDATION,  
a Washington corporation; PRESTON  
GATES & ELLIS LLP, a Washington  
limited liability partnership; CITIZENS  
REALTY COMPANY, a Washington  
corporation; LINCOLN INVESTMENT  
COMPANY OF SPOKANE, a Washington  
corporation; RPS MALL, L.L.C., a  
Washington limited liability company;  
RPS II, L.L.C., a Washington limited  
liability company; RWR MANAGEMENT,  
INC., a Washington corporation, doing  
business as R. W. ROBIDEAUX AND  
COMPANY; CITY OF SPOKANE,  
WASHINGTON, a first-class charter city

No. CS 01-0127-EFS

**PLAINTIFFS' REPLY  
TO DEFENDANT  
CITY OF SPOKANE'S  
COUNTERCLAIM**

1 of the State of Washington; SPOKANE  
2 PUBLIC PARKING DEVELOPMENT  
3 AUTHORITY, an unregistered  
4 Washington corporation, doing business as  
5 RIVER PARK SQUARE PARKING,

6 Defendants.

7 Plaintiffs, by their attorneys, Davis & Ceriani, P.C. and Crumb &  
8 Munding, P.S., for their Reply to Defendant City of Spokane's (the  
9 "City") Counterclaims, state as follows:  
10

11 0.0 Plaintiffs incorporate the allegations of their Complaint  
12 and generally deny all allegations set forth in the City's Counterclaims  
13 that are inconsistent with the allegations of Plaintiffs' Complaint.  
14

15 1.1 Plaintiffs admit the allegations set forth in paragraph 1.1  
16 of the City's Counterclaims.  
17

18 1.2 Plaintiffs admit the allegations set forth in paragraph 1.2  
19 of the City's Counterclaims.  
20

21 1.3 Plaintiffs are without knowledge or information sufficient  
22 to form a belief as to the truth of the allegations set forth in paragraph  
23 1.3 of the City's Counterclaims and therefore deny the same.  
24

25 1.4 Plaintiffs admit the allegations set forth in paragraph 1.4  
26 of the City's Counterclaims.  
27  
28

1           1.5   Plaintiffs are without knowledge or information sufficient  
2 to form a belief as to the truth of the allegations set forth in paragraph  
3 1.5 of the City's Counterclaims and therefore deny the same.  
4

5           1.6   Plaintiffs admit that the Developers and the City had  
6 discussions about the City's possible contributions to renovating and  
7 expanding the garage. Plaintiffs are without knowledge or information  
8 sufficient to form a belief as to the remaining allegations set forth in  
9 paragraph 1.6 of the City's Counterclaims and therefore deny the same.  
10

11           1.7   Plaintiffs are without knowledge or information sufficient  
12 to form a belief as to the truth of the allegations set forth in paragraph  
13 1.7 of the City's Counterclaims and therefore deny the same.  
14

15           1.8   Plaintiffs are without knowledge or information sufficient  
16 to form a belief as to the truth of the allegations set forth in paragraph  
17 1.8 of the City's Counterclaims and therefore deny the same.  
18

19           1.9   Plaintiffs admit that, during 1995, the City and the  
20 Developers had discussions regarding the issuance of tax-exempt bonds  
21 as a means to pay for a to-be renovated and expanded garage.  
22 Plaintiffs are without knowledge or information sufficient to form a  
23 belief as to the truth of the remaining allegations set forth in  
24 paragraph 1.9 of the City's Counterclaims and therefore deny the same.  
25  
26  
27  
28

1           1.10 Plaintiffs admit that the Developers discussed the sale of  
2 the existing Garage to the City on or about June 1995. Plaintiffs  
3 further admit that the Developers projected that the City could  
4 accomplish what was necessary to acquire (not lease, but purchase),  
5 renovate and expand the Garage with a bond issue of approximately  
6 \$14 million. Plaintiffs are without knowledge or information sufficient  
7 to form a belief as to the truth of the remaining allegations set forth in  
8 paragraph 1.10 of the City's Counterclaims and therefore deny the  
9 same.  
10  
11  
12

13           1.11 Plaintiffs admit that there is a June 2, 1995, letter from  
14 Roy Koegen of Perkins Coie, LLP, state that such letter speaks for itself  
15 and deny any allegations set forth in paragraph 1.11 of the City's  
16 Counterclaims that are inconsistent with the letter.  
17

18           1.12 Plaintiffs admit that the City passed Resolution 95-74 as  
19 alleged, state that such Resolution speaks for itself and deny any  
20 allegations set forth in paragraph 1.12 of the City's Counterclaims that  
21 are inconsistent with the Resolution. Plaintiffs admit the authenticity  
22 of Exhibit A to the Counterclaims.  
23  
24

25           1.13 Plaintiffs are without knowledge or information sufficient  
26 to form a belief as to the truth of the allegations set forth in paragraph  
27 1.13 of the City's Counterclaims and therefore deny the same.  
28

1           1.14 Plaintiffs state that Resolution 95-74 speaks for itself and  
2 deny any allegations set forth in paragraph 1.14 of the City's  
3 Counterclaims that are inconsistent with the Resolution.  
4

5           1.15 Plaintiffs admit that Walker Parking Consultants/  
6 Engineers, Inc. ["Walker"] held itself out as having special expertise in  
7 matter related to parking but are without knowledge or information  
8 sufficient to form a belief as to the truth of the allegations set forth in  
9 paragraph 1.15 of the City's Counterclaims and therefore deny the  
10 same.  
11  
12

13           1.16 Plaintiffs are without knowledge or information sufficient  
14 to form a belief as to the truth of the allegations set forth in paragraph  
15 1.16 of the City's Counterclaims and therefore deny the same.  
16

17           1.17 Plaintiffs are without knowledge or information sufficient  
18 to form a belief as to the truth of the allegations set forth in paragraph  
19 1.17 of the City's Counterclaims and therefore deny the same.  
20

21           1.18 Plaintiffs are without knowledge or information sufficient  
22 to form a belief as to the truth of the allegations set forth in paragraph  
23 1.18 of the City's Counterclaims and therefore deny the same.  
24

25           1.19 Plaintiffs state that any contract and/or Consulting  
26 Agreement between the City and Walker speaks for itself and deny any  
27 allegations set forth in paragraph 1.19 of the City's Counterclaims that  
28

1 are inconsistent with the contract and/or Consulting Agreement.

2 Plaintiffs admit the authenticity of Exhibit B to the Counterclaims.

3  
4 1.20 Plaintiffs are without knowledge or information sufficient  
5 to form a belief as to the truth of the allegations set forth in paragraph  
6 1.20 of the City's Counterclaims and therefore deny the same.

7  
8 1.21 Plaintiffs admit that the City commissioned the unusual  
9 appraisals as alleged but are Plaintiffs are without knowledge or  
10 information sufficient to form a belief as to the truth of the remaining  
11 allegations set forth in paragraph 1.21 of the City's Counterclaims and  
12 therefore deny the same.

13  
14 1.22 Plaintiffs admit the allegations set forth in paragraph 1.22  
15 of the City's Counterclaims.

16  
17 1.23 Plaintiffs are without knowledge or information sufficient  
18 to form a belief as to the truth of the allegations set forth in paragraph  
19 1.23 of the City's Counterclaims and therefore deny the same.

20  
21 1.24 Plaintiffs are without knowledge or information sufficient  
22 to form a belief as to the truth of the allegations set forth in paragraph  
23 1.24 of the City's Counterclaims and therefore deny the same.

24  
25 1.25 Plaintiffs admit that a Feasibility Analysis issued by  
26 Walker as alleged, states that such Analysis speaks for itself and deny  
27

1 any allegations set forth in paragraph 1.25 of the City's Counterclaims  
2 that are inconsistent with the Feasibility Analysis.

3  
4 1.26 Plaintiffs admit that a Public Use Study was issued by  
5 Walker as alleged, state that such Study speaks for itself and deny any  
6 allegations set forth in paragraph 1.26 of the City's Counterclaims that  
7 are inconsistent with the Study.  
8

9 1.27 Plaintiffs are without knowledge or information sufficient  
10 to form a belief as to the truth of the allegations set forth in paragraph  
11 1.27 of the City's Counterclaims and therefore deny the same.  
12

13 1.28 Plaintiffs are without knowledge or information sufficient  
14 to form a belief as to the truth of the allegations set forth in paragraph  
15 1.28 of the City's Counterclaims and therefore deny the same.  
16

17 1.29 Plaintiffs admit the allegations set forth in paragraph 1.29  
18 of the City's Counterclaims.  
19

20 1.30 Plaintiffs admit Walker's parking demand projections fail  
21 to meaningfully account for many things, including the failures alleged  
22 in paragraph 1.29 of the City's Counterclaims.  
23

24 1.31 Plaintiffs admit that Walker was aware of the impact of a  
25 validation program. Plaintiffs are without knowledge or information  
26 sufficient to form a belief as to the truth of the remaining allegations  
27  
28

1 set forth in paragraph 1.31 of the City's Counterclaims and Cross-  
2 Claims and therefore deny the same.

3  
4 1.32 With respect to the allegations contained in the first  
5 sentence of paragraph 1.32 of the City's Counterclaims, Plaintiffs state  
6 that the Feasibility Analysis speaks for itself and deny any allegations  
7 set forth in paragraph 1.32 of the City's Counterclaims that are  
8 inconsistent with the Feasibility Analysis. Plaintiffs admit the  
9 remaining allegations contained in paragraph 1.32 except that  
10 Plaintiffs deny the City was unaware of Walker's inconsistent  
11 application of the "no validation assumption."  
12

13  
14 1.33 Plaintiffs deny the allegations set forth in paragraph 1.33  
15 of the City's Counterclaims and affirmatively aver that, at the time the  
16 Bonds were issued, the City was aware of such "dramatic difference"  
17 either because it had been made known to the City or because agents of  
18 the City were aware of it and such knowledge is imputed to the City.  
19  
20

21 1.34 Plaintiffs deny the allegations set forth in paragraph 1.34  
22 of the City's Counterclaims and affirmatively aver that, at the time the  
23 Bonds were issued, the City was fully aware of the facts alleged either  
24 because such facts had been made known to the City or because agents  
25 of the City were aware of such facts and such knowledge is imputed to  
26 the City.  
27  
28



1           1.35 Plaintiffs deny the allegations set forth in paragraph 1.35  
2 of the City's Counterclaims and affirmatively aver that, at the time the  
3 Bonds were issued, the City was fully aware of the facts alleged either  
4 because such facts had been made known to the City or because agents  
5 of the City were aware of such facts and such knowledge is imputed to  
6 the City.  
7

8  
9           1.36 Plaintiffs are without knowledge or information sufficient  
10 to form a belief as to the truth of the allegations contained in the first  
11 three sentences of paragraph 1.36 of the City's Counterclaims and  
12 therefore deny the same. Plaintiffs further state that proposed  
13 Ordinances 31763, 31764 and 31765 of the Spokane City Council speak  
14 for themselves and deny any allegations set forth in paragraph 1.36 of  
15 the City's Counterclaims that are inconsistent with the proposed  
16 Ordinances. Plaintiffs admit the authenticity of Exhibit "C" to the  
17 Counterclaims.  
18  
19  
20

21           1.37 Plaintiffs state that proposed Ordinances 31763, 31764 and  
22 31765 of the Spokane City Council speak for themselves and deny any  
23 allegations set forth in paragraph 1.37 of the City's Counterclaims that  
24 are inconsistent with the proposed Ordinances. To the extent that the  
25 allegations in paragraph 1.37 call for a legal conclusion, no response is  
26 required or made by the Plaintiffs.  
27  
28

1           1.38 Plaintiffs are without knowledge or information sufficient  
2 to form a belief as to the truth of the allegations set forth in paragraph  
3  
4 1.38 of the City's Counterclaims and therefore deny the same.

5           1.39 Plaintiffs are without knowledge or information sufficient  
6 to form a belief as to the truth of the allegations set forth in paragraph  
7  
8 1.39 of the City's Counterclaims and therefore deny the same.  
9 Plaintiffs affirmatively allege that there is a transcript of such  
10 testimony and Plaintiffs deny all allegations in paragraph 1.39  
11 inconsistent therewith.  
12

13           1.40 Plaintiffs state that the Transcript of Council Proceedings  
14 of October 17, 1996, speaks for itself and deny any allegations set forth  
15 in paragraph 1.40 of the City's Counterclaims that are inconsistent  
16 with the Transcript.  
17

18           1.41 Plaintiffs state that the Transcript of Council Proceedings  
19 of October 17, 1996, speaks for itself and deny any allegations set forth  
20 in paragraph 1.41 of the City's Counterclaims that are inconsistent  
21 with the Transcript.  
22

23           1.42 Plaintiffs state that the Transcript of Council Proceedings  
24 of October 17, 1996, speaks for itself and deny any allegations set forth  
25 in paragraph 1.42 of the City's Counterclaims that are inconsistent  
26 with the Transcript.  
27  
28

1           1.43 Plaintiffs are without knowledge or information sufficient  
2 to form a belief as to the truth of the allegations set forth in paragraph  
3  
4 1.43 of the City's Counterclaims and therefore deny the same.

5           1.44 Plaintiffs are without knowledge or information sufficient  
6 to form a belief as to the truth of the allegations set forth in paragraph  
7  
8 1.44 of the City's Counterclaims and therefore deny the same.

9           1.45 Plaintiffs are without knowledge or information sufficient  
10 to form a belief as to the truth of the allegations set forth in paragraph  
11  
12 1.45 of the City's Counterclaims and therefore deny the same.  
13 Plaintiffs specifically deny that the City ever "abandoned" the concept  
14 of using revenue bonds to purchase the garage.

15           1.46 Plaintiffs are without knowledge or information sufficient  
16 to form a belief as to the truth of the allegations set forth in paragraph  
17  
18 1.46 of the City's Counterclaims and therefore deny the same.

19           1.47 Plaintiffs state that IRS Revenue Ruling 63-20 speaks for  
20  
21 itself and deny any allegations set forth in paragraph 1.47 of the City's  
22 Counterclaims that are inconsistent with the Revenue Ruling. To the  
23 extent that the allegations in paragraph 1.47 call for a legal conclusion  
24  
25 as to the interpretation of Revenue Ruling 63-20, no response is  
26 required or made by the Plaintiffs.  
27  
28

1           1.48 Plaintiffs are without knowledge or information sufficient  
2 to form a belief as to the truth of the allegations set forth in paragraph  
3  
4 1.48 of the City's Counterclaims and therefore deny the same.  
5 Plaintiffs affirmatively allege that there should be a transcript of such  
6 testimony and Plaintiffs deny all allegations in paragraph 1.48  
7 inconsistent therewith.  
8

9           1.49 Plaintiffs are without knowledge or information sufficient  
10 to form a belief as to the truth of the allegations set forth in paragraph  
11  
12 1.49 of the City's Counterclaims and therefore deny the same.  
13 Plaintiffs affirmatively allege that there should be a transcript of such  
14 testimony and Plaintiffs deny all allegations in paragraph 1.49  
15 inconsistent therewith.  
16

17           1.50 Plaintiffs are without knowledge or information sufficient  
18 to form a belief as to the truth of the allegations set forth in the first  
19  
20 sentence of paragraph 1.50 of the City's Counterclaims and therefore  
21 deny the same. As to the allegations referencing an article in the City's  
22 daily newspaper, Plaintiffs state that such article speaks for itself and  
23 deny any allegations set forth in paragraph 1.50 of the City's  
24 Counterclaims that are inconsistent with the article.  
25

26           1.51 Plaintiffs are without knowledge or information sufficient  
27 to form a belief as to the truth of the allegations set forth in paragraph  
28

1 1.51 of the City's Counterclaims and therefore deny the same.  
2 Plaintiffs affirmatively allege that, irrespective of any such delay, the  
3  
4 Coopers & Lybrand report was received, and reviewed by, the City  
5 prior to the issuance of the Bonds.

6 1.52 Plaintiffs state that Ordinance C-31823 speaks for itself  
7  
8 and deny any allegations set forth in paragraph 1.52 of the City's  
9 Counterclaims that are inconsistent with the Ordinance. To the extent  
10 that the allegations in paragraph 1.52 call for a legal conclusion as to  
11 the interpretation of Ordinance C-31823, no response is required or  
12 made by the Plaintiffs. Plaintiffs admit the authenticity of Exhibit D to  
13 the City's Counterclaims.  
14

15 1.53 Plaintiffs state that Ordinance C-31823 speaks for itself  
16  
17 and deny any allegations set forth in paragraph 1.53 of the City's  
18 Counterclaims that are inconsistent with the Ordinance. To the extent  
19 that the allegations in paragraph 1.53 call for a legal conclusion as to  
20 the interpretation of Ordinance C-31823, no response is required or  
21 made by the Plaintiffs.  
22

23 1.54 Plaintiffs state that Ordinance C-31823 speaks for itself  
24  
25 and deny any allegations set forth in paragraph 1.54 of the City's  
26 Counterclaims that are inconsistent with the Ordinance. To the extent  
27 that the allegations in paragraph 1.54 call for a legal conclusion as to  
28

1 the interpretation of Ordinance C-31823, no response is required or  
2 made by the Plaintiffs. Plaintiffs affirmatively allege, however, that if  
3 the City truly believed, at the time the Bonds were issued, that the City  
4 loan obligations under the Ordinance were as alleged in paragraph 1.54  
5 of its Counterclaims, then the City knowingly participated in  
6 defrauding the Plaintiffs (and the other purchasers of the Bonds)  
7 because this belief with respect to the nature of the City's loan  
8 obligations is entirely inconsistent with the representations made in  
9 the Official Statements (both Preliminary and Final), which  
10 representations were known to, and approved by, the City prior to the  
11 issuance of the Bonds.  
12

13  
14  
15 1.55 Plaintiffs state that Ordinance C-31823 speaks for itself  
16 and deny any allegations set forth in paragraph 1.55 of the City's  
17 Counterclaims that are inconsistent with the Ordinance. To the extent  
18 that the allegations in paragraph 1.55 call for a legal conclusion as to  
19 the interpretation of Ordinance C-31823, no response is required from,  
20 or made by, the Plaintiffs. Plaintiffs affirmatively allege, however, that  
21 if the City truly believed, at the time the Bonds were issued, that the  
22 City loan obligations under the Ordinance were as alleged in paragraph  
23 1.55 of its Counterclaims, then the City knowingly participated in  
24 defrauding the Plaintiffs (and the other purchasers of the Bonds)  
25  
26  
27  
28

1 because this belief with respect to the nature of the City's loan  
2 obligations is entirely inconsistent with the representations made in  
3 the Official Statements (both Preliminary and Final), which  
4 representations were known to, and approved by, the City prior to the  
5 issuance of the Bonds.  
6

7  
8 1.56 Plaintiffs state that Ordinance C-31823 speaks for itself  
9 and deny any allegations set forth in paragraph 1.56 of the City's  
10 Counterclaims that are inconsistent with the Ordinance. To the extent  
11 that the allegations in paragraph 1.56 call for a legal conclusion as to  
12 the interpretation of Ordinance C-31823, no response is required from,  
13 or made by, Plaintiffs. Plaintiffs affirmatively allege, however, that if  
14 the City truly believed, at the time the Bonds were issued, that the City  
15 loan obligations under the Ordinance were as alleged in paragraph 1.56  
16 of its Counterclaims, then the City knowingly participated in  
17 defrauding the Plaintiffs (and the other purchasers of the Bonds)  
18 because this belief with respect to the nature of the City's loan  
19 obligations is entirely inconsistent with the representations made in  
20 the Official Statements (both Preliminary and Final), which  
21 representations were known to, and approved by, the City prior to the  
22 issuance of the Bonds.  
23  
24  
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1           1.57 Plaintiffs are without knowledge or information sufficient  
2 to form a belief as to the truth of the allegations set forth in paragraph  
3 1.57 of the City's Counterclaims and therefore deny the same.  
4

5           1.58 Plaintiffs admit that the transcript of Council Proceedings  
6 of January 13, 1997, speaks for itself and deny any allegations set forth  
7 in paragraph 1.58 of the City's Counterclaims that are inconsistent  
8 with the Transcript. To the extent that the allegations in paragraph  
9 1.58 call for a legal conclusion, no response is required by the Plaintiffs.  
10

11           1.59 Plaintiffs state that the transcript of Council Proceedings of  
12 January 13, 1997, speaks for itself and deny any allegations set forth in  
13 paragraph 1.59 of the City's Counterclaims that are inconsistent with  
14 the Transcript. To the extent that the allegations in paragraph 1.59  
15 call for a legal conclusion, no response is required from, or made by,  
16 Plaintiffs.  
17

18           2.57[sic] Plaintiffs state that the transcript of Council  
19 Proceedings of January 13, 1997, speaks for itself and deny any  
20 allegations set forth in paragraph 2.57 of the City's Counterclaims that  
21 are inconsistent with the Transcript. Plaintiffs deny the final sentence  
22 of paragraph 2.57 and affirmatively aver that if the City and the  
23 Developers did believe, at the time the Bonds were issued, that the City  
24 loan obligations under the Ordinance were as alleged in the City's  
25  
26  
27  
28



1 Counterclaims, then the City and the Developers knowingly  
2 participated in defrauding the Plaintiffs (and the other purchasers of  
3 the Bonds) because this belief with respect to the nature of the City's  
4 loan obligations is entirely inconsistent with the representations made  
5 in the Official Statements (both Preliminary and Final), which  
6 representations were known to, and approved by, the City and the  
7 Developers prior to the issuance of the Bonds.  
8

10 1.60 Plaintiffs are without knowledge or information sufficient  
11 to form a belief as to the truth of the allegations set forth in paragraph  
12 1.60 of the City's Counterclaims and therefore deny the same.  
13

14 1.61 Plaintiffs are without knowledge or information sufficient  
15 to form a belief as to the truth of the allegations set forth in paragraph  
16 1.61 of the City's Counterclaims and therefore deny the same.  
17

18 1.62 Plaintiffs are without knowledge or information sufficient  
19 to form a belief as to the truth of the allegations set forth in paragraph  
20 1.62 of the City's Counterclaims and therefore deny the same.  
21

22 Plaintiffs affirmatively allege that under no circumstances can the City  
23 justify its conduct, as alleged in the Complaint, by claiming that the  
24 Developers were in a hurry. On the contrary, such pressure from the  
25 Developers was a "red flag" that should have caused the City to step  
26  
27  
28

1 back and carefully evaluate the transaction, including a thorough study  
2 of the Coopers & Lybrand report.

3 1.63 Plaintiffs are without knowledge or information sufficient  
4 to form a belief as to the truth of the allegations set forth in paragraph  
5 1.63 of the City's Counterclaims and therefore deny the same.  
6 Plaintiffs specifically deny that any such reliance, even if it occurred,  
7 was reasonable or justifiable.  
8

9 1.64 Plaintiffs deny the allegations set forth in paragraph 1.64  
10 of the City's Counterclaims and affirmatively allege under no  
11 circumstances can the City justify its conduct by claiming "the  
12 Developers made me do it."  
13

14 1.65 Plaintiffs deny the allegations set forth in paragraph 1.65  
15 of the City's Counterclaims.  
16

17 1.66 Plaintiffs admit Ordinance C-31823 was passed, state that  
18 the Ordinance speaks for itself and deny all allegations in paragraph  
19 1.66 of the City's Counterclaims inconsistent therewith.  
20

21 1.67 Plaintiffs admit the allegations set forth in the final  
22 sentence of paragraph 1.68 of the City's Counterclaims and deny the  
23 allegations set forth in the remainder of paragraph 1.67 of the City's  
24 Counterclaims. Plaintiffs affirmatively allege that if the City truly  
25 believed, at the time the Bonds were issued, that the City loan  
26  
27  
28

1 obligations under the Ordinance were as alleged in its Counterclaims,  
2 then the City knowingly participated in defrauding the Plaintiffs (and  
3 the other purchasers of the Bonds) because this belief with respect to  
4 the nature of the City's loan obligations is entirely inconsistent with  
5 the representations made in the Official Statements (both Preliminary  
6 and Final), which representations were known to, and approved by, the  
7 City prior to the issuance of the Bonds.  
8

9  
10 1.68 Plaintiffs are without knowledge or information sufficient  
11 to form a belief as to the truth of the allegations set forth in paragraph  
12 1.68 of the City's Counterclaims and, therefore, deny the same.  
13 Plaintiffs specifically deny that the knowledge and understandings of  
14 individual council member is "irrelevant as a matter of law" because  
15 such Council members were authorized agents of the City acting within  
16 the course and scope of such agency and their knowledge is, therefore,  
17 imputed to the City.  
18  
19  
20

21 1.69 Plaintiffs deny the allegations set forth in paragraph 1.69  
22 of the City's Counterclaims and affirmatively aver that the City knew  
23 debt service on the Bonds had a first and prior right upon all revenues  
24 and, accordingly, the City's loan obligations (which were trumpeted to  
25 prospective purchasers of the Bonds as a "credit enhancement") were  
26  
27  
28

1 meaningless if the obligations were as characterized in the City's  
2 Counterclaims.

3  
4 1.70 Plaintiffs admit the first sentence set forth in paragraph  
5 1.70 of the City's Counterclaims and deny the remaining allegations.

6 1.71 Plaintiffs admit the allegations set forth in paragraph 1.71  
7 of the City's Counterclaims.

8  
9 1.72 Plaintiffs are without knowledge or information sufficient  
10 to form a belief as to the truth of the allegations set forth in paragraph  
11 1.72 of the City's Counterclaims and therefore deny the same.

12  
13 1.73 Plaintiffs are without knowledge or information sufficient  
14 to form a belief as to the truth of the allegations set forth in paragraph  
15 1.73 of the City's Counterclaims and therefore deny the same.

16  
17 1.74 Plaintiffs admit the Authority could not, by itself, amend  
18 the legal obligations of the City. Plaintiffs deny the remaining  
19 allegations set forth in paragraph 1.74 of the City's Counterclaims.

20  
21 1.75 Plaintiffs deny the allegations set forth in paragraph 1.75  
22 of the City's Counterclaims.

23  
24 1.76 Plaintiffs are without knowledge or information sufficient  
25 to form a belief as to the truth of the allegations set forth in paragraph  
26 1.76 of the City's Counterclaims and therefore deny the same.  
27 Plaintiffs specifically deny that an "amendment" was necessary in  
28

1 order for the City's loan obligation to be triggered by the insufficiency of  
2 Parking Revenues to pay Debt Service, the Operating Expenses and  
3 then Ground Rent. Moreover, if the City truly believed, at the time the  
4 Bonds were issued, that the City's loan obligations under the  
5 Ordinance were as alleged in its Counterclaims, then the City  
6 knowingly participated in defrauding the Plaintiffs (and the other  
7 purchasers of the Bonds) because this belief with respect to the nature  
8 of the City's loan obligations is entirely inconsistent with the  
9 representations made in the Official Statements (both Preliminary and  
10 Final), which representations were known to, and approved by, the City  
11 prior to the issuance of the Bonds.  
12

13  
14  
15  
16 1.77 Plaintiffs state that the Washington Supreme Court's  
17 decision in *CLEAN v. City of Spokane*, 133 Wn.2d 455, speaks for itself  
18 and deny any allegations set forth in paragraph 1.77 of the City's  
19 Counterclaims that are inconsistent with the decision.  
20

21 1.78 Plaintiffs are without knowledge or information sufficient  
22 to form a belief as to the truth of the allegations set forth in paragraph  
23 1.78 of the City's Counterclaims and therefore deny the same.  
24

25 1.79 Plaintiffs are without knowledge or information sufficient  
26 to form a belief as to the truth of the allegations set forth in paragraph  
27 1.79 of the City's Counterclaims and therefore deny the same.  
28

1           1.80 Plaintiffs admit the allegations set forth in paragraph 1.80  
2 of the City's Counterclaims.

3           1.81 Plaintiffs admit the allegations set forth in paragraph 1.81  
4 of the City's Counterclaims.

5           1.82 Based upon information currently available, Plaintiffs  
6 believe the allegations set forth in paragraph 1.82 of the City's  
7 Counterclaims to be true and therefore admit same.

8           1.83 Plaintiffs admit the allegations set forth in paragraph 1.83  
9 of the City's Counterclaims.

10          1.84 Plaintiffs are without knowledge or information sufficient  
11 to form a belief as to the truth of the allegations set forth in paragraph  
12 1.84 of the City's Counterclaims and therefore deny same.

13          1.85 Plaintiffs are without knowledge or information sufficient  
14 to form a belief as to the truth of the allegations set forth in the first  
15 sentence of paragraph 1.85 of the City's Counterclaims and therefore  
16 deny same. Plaintiffs admit the remaining allegations in paragraph  
17 1.85.

18          1.86 Plaintiffs admit the allegations contained in the first clause  
19 of paragraph 1.86 of the City's Counterclaims and are without  
20 knowledge or information sufficient to form a belief as to the truth of  
21 the remaining allegations in paragraph 1.86 and therefore deny same.  
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1           1.87 Plaintiffs admit the allegations set forth in paragraph 1.87  
2 of the City's Counterclaims.

3           1.88 Plaintiffs admit the allegations set forth in paragraph 1.88  
4 of the City's Counterclaims.

5           1.89 Plaintiffs admit the allegations set forth in paragraph 1.89  
6 of the City's Counterclaims.

7           1.90 Plaintiffs admit the allegations set forth in paragraph 1.90  
8 of the City's Counterclaims.

9           1.91 Plaintiffs are without knowledge or information sufficient  
10 to form a belief as to the truth of the allegations set forth in paragraph  
11 1.91 of the City's Counterclaims and therefore deny same.

12           1.92 Plaintiffs admit the allegations set forth in paragraph 1.92  
13 of the City's Counterclaims.

14           1.93 Plaintiffs admit the allegations contained in paragraph  
15 1.93 of the City's Counterclaims.

16           1.94 Plaintiffs admit the allegations set forth in paragraph 1.94  
17 of the City's Counterclaims.

18           1.95 Plaintiffs admit the allegations set forth in paragraph 1.95  
19 of the City's Counterclaims.

20           1.96 Plaintiffs admit the allegations set forth in paragraph 1.96  
21 of the City's Counterclaims.

1           1.97 Plaintiffs admit the allegations set forth in paragraph 1.97  
2 of the City's Counterclaims.

3  
4           1.98 Plaintiffs state the Keyser Marston report speaks for itself  
5 and deny all allegations set forth in paragraph 1.98 of the City's  
6 Counterclaims inconsistent therewith.

7  
8           1.99 Plaintiffs state the Keyser Marston report speaks for itself  
9 and deny all allegations set forth in paragraph 1.99 of the City's  
10 Counterclaims inconsistent therewith.

11  
12           1.100 Plaintiffs admit the allegations set forth in paragraph  
13 1.100 of the City's Counterclaims.

14           1.101 Plaintiffs are without knowledge or information sufficient  
15 to form a belief as to the truth of the allegations set forth in paragraph  
16 1.101 of the City's Counterclaims and therefore deny same.

17  
18           1.102 Plaintiffs are without knowledge or information sufficient  
19 to form a belief as to the truth of the allegations set forth in paragraph  
20 1.102 of the City's Counterclaims and therefore deny same.

21  
22           1.103 Plaintiffs are without knowledge or information sufficient  
23 to form a belief as to the truth of the allegations set forth in paragraph  
24 1.103 of the City's Counterclaims and therefore deny same.

25  
26           1.104 Plaintiffs admit the allegations set forth in paragraph  
27 1.104 of the City's Counterclaims.  
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1           1.105 Plaintiffs state that the Superior Court's Writ of  
2 Mandamus and Order as referred to in paragraph 1.105 speak for  
3 themselves and deny any allegations set forth in paragraph 1.105 of the  
4 City's Counterclaims that are inconsistent with the Writ of Mandamus  
5 and Order.  
6

7  
8           1.106 Plaintiffs admit the allegations set forth in paragraph  
9 1.106 of the City's Counterclaims.

10           1.107 Plaintiffs are without knowledge or information sufficient  
11 to form a belief as to the truth of the allegations set forth in paragraph  
12 1.107 of the City's Counterclaims and therefore deny same.  
13

14           1.108 Plaintiffs admit the allegations set forth in paragraph  
15 1.108 of the City's Counterclaims.  
16

17  
18                           **FIRST CLAIM**  
19                           **(Declaratory Relief Re Scope of Loan Pledge)**

20           2.1 Plaintiffs incorporate their foregoing responses to  
21 paragraphs 1.1 through 1.108 of the City's Counterclaims.

22           2.2 Plaintiffs deny Paragraph 2.2 of the City's Counterclaims.  
23

24           2.3 Plaintiffs admit the allegations set forth in paragraph 2.3  
25 of the City's Counterclaims.  
26  
27  
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1           2.4   Plaintiffs are without knowledge or information sufficient  
2 to form a belief as to the truth of the allegations set forth in paragraph  
3 1.107 of the City's Counterclaims and therefore deny same.  
4

5           2.5   Plaintiffs deny the allegations set forth in paragraph 2.5 of  
6 the City's Counterclaims.  
7

8           2.6   Plaintiffs are without knowledge or information sufficient  
9 to form a belief as to the truth of the allegations set forth in paragraph  
10 2.6 of the City's Counterclaims and therefore deny same. Plaintiffs  
11 affirmatively allege that even if such allegations are true, such  
12 descriptions were and are entirely irrelevant.  
13

14           2.7   Plaintiffs are without knowledge or information sufficient  
15 to form a belief as to the truth of the allegations set forth in paragraph  
16 2.7 of the City's Counterclaims and therefore deny same.  
17

18           2.8   Paragraph 2.8 of the City's Counterclaims sets forth  
19 nothing but a legal conclusion to which Plaintiffs neither need, nor do,  
20 respond. To the extent a response is required, Plaintiffs deny the  
21 conclusion because the predicate (i.e., that priority payment of debt  
22 service from the revenues somehow "changed" the City's obligations) is  
23 fallacious.  
24

25           2.9   Plaintiffs admit the allegations set forth in paragraph 2.9  
26 of the City's Counterclaims.  
27  
28

2.10 Plaintiffs admit the allegations set forth in paragraph 2.10 of the City's Counterclaims.

2.11 Plaintiffs admit the allegations set forth in paragraph 2.11 of the City's Counterclaims.

2.12 Plaintiffs admit the allegations set forth in paragraph 2.12 of the City's Counterclaims.

2.13 Plaintiffs admit the allegations set forth in paragraph 2.13 of the City's Counterclaims.

2.14 Plaintiffs admit that the City seeks the determination requested and deny the City is entitled to such relief.

**SECOND CLAIM**  
**(Alternative Declaratory Relief Re Validity of Loan Pledge)**

2.15 Plaintiffs incorporate their foregoing responses to paragraphs 1.1 through 2.14.

2.16 Plaintiffs admit the allegations set forth in paragraph 2.16 of the City's Counterclaims.

2.17 Plaintiffs admit the allegations set forth in paragraph 2.17 of the City's Counterclaims.

2.18 Plaintiffs admit the allegations set forth in paragraph 2.18 of the City's Counterclaims.

1           2.19 Plaintiffs admit the allegations set forth in paragraph 2.19  
2 of the City's Counterclaims.

3           2.20 Plaintiffs admit the allegations set forth in paragraph 2.20  
4 of the City's Counterclaims.

5           2.21 Plaintiffs admit that the City seeks the determination  
6 requested and deny the City is entitled to such relief.

7           2.22 Plaintiffs admit that a contract was entered into and deny  
8 the remaining allegations in Paragraph 2.22 of the City's  
9 Counterclaims.

10           2.23 Plaintiffs deny the allegations set forth in paragraph 2.23  
11 of the City's Counterclaims.

12           2.24 Because Plaintiffs, at this time, lack knowledge or  
13 information sufficient to form a belief as to what was, or was not, a part  
14 of the record before the Washington Supreme court, Plaintiffs deny the  
15 allegations set forth in paragraph 2.24 of the City's Counterclaims.  
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22                   **AFFIRMATIVE DEFENSES**

23           1.     Even were the City entitled to the relief requested in its  
24 Counterclaims, the City is now estopped from asserting such claims by  
25 virtue of its conduct in permitting the City's loan obligations to be  
26 represented to potential bond purchasers, including Plaintiffs, in a  
27  
28

1 fashion that is entirely inconsistent with the position now taken by the  
2 City with respect to its loan obligations.

3  
4 2. To the extent there were, or are, different possible  
5 interpretations of the Ordinances referenced in the City's  
6 Counterclaims, the City has, by its conduct in permitting the bonds to  
7 be sold pursuant to disclosure documents that characterized the City's  
8 obligations in a certain fashion, ratified the interpretation set forth in  
9 the Official Statements.  
10

11  
12 3. The City has waived any right to assert that its loan  
13 obligations are different that as described in the Official Statements.

14  
15 4. To the extent the relief sought by the City is equitable, the  
16 City's Counterclaims are barred by the doctrine of unclean hands.

17  
18 WHEREFORE, Plaintiffs request that the Counterclaims of the  
19 City be dismissed and that judgment enter in favor of the Plaintiffs,  
20 and all bondholders, enforcing the City's loan obligations.  
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1 DATED this 14<sup>th</sup> day of May, 2001.

2  
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Notary Public  
My commission expires: 2/2004